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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6976 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

J I THAKKAR

Versus

NATIONAL TEXTILE CORPN LTD

Appearance:

MR DM THAKKAR for Petitioner

MR BR GUPTA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/12/2000

ORAL JUDGEMENT

#. The petitioner in this petition under Article 226 of the Constitution praying for quashing and setting aside the impugned action of the respondents of withholding the amount of arrears payable to the petitioner towards the difference of revised pay scale w.e.f. 1-1-1986 and the

different of the provident fund. Further prayer has been made for direction to the respondents to release the amount of arrears aforesaid with interest thereon at the rate of 18%p.a..

#. The facts of the case are that the petitioner was appointed as Chief Cost Accountant in the respondent-Corporation w.e.f. 12-10-1978. This post in the year 1987 was redesignated as General Manager (Costing). The petitioner states that considering the sincerity, zeal and efficiency, he was given additional increments by the respondents three times during the entire service tenure. He retired from the services of the Corporation on reaching the age of superannuation on 24-1-91. the petitioner was appointed as Committee Member (Finance) for disposal of coal ash in the year 1985. This Committee consisted of four members headed by director (Technical), chief engineer, Chief Stores Purchaser and Chief Cost Accountant. In the month of July, 1986, the petitioner was chargesheeted by the respondent-Corporation by levelling allegations against him to the effect that he together with other Committee members had committed certain irregularities in allotment of contract to a particular party. After full-fledged inquiry, the Inquiry Officer gave a finding to the effect that the petitioner acted in a negligent manner. However, the other charges of acting in collusion with other Committee members were not upheld against the petitioner. The respondent punished the petitioner and imposed a penalty of degradation to the lower grade permanently vide order dated 21-10-1986. Accordingly, the petitioner was placed in the lower grade of Rs.1350-2575 and his basic pay was fixed at Rs.2575/-p.m.. Vide order dated 29-2-1988, the petitioner was placed under suspension by the respondents on the ground that some criminal offence is under investigation by the C.B.I.. It is the say of the petitioner that the charges levelled against the petitioner in the disciplinary proceedings and before the C.B.I. were identical and once the petitioner has been punished in the departmental inquiry, there was no justification whatsoever to suspend him on the ground of pending criminal complaint. In fact, what the petitioner submits that no criminal case could have been filed against him.

The petitioner produced the pay slip dated 31-8-1990 to show that he was paid subsistence allowance to the tune of Rs.6062-40ps. The Corporation has revised the pay scale of its employees/officers in the month of September, 1990. This benefit of revision of pay scales

was given to its employees and officers w.e.f. 1-1-1986 as per the recommendations of the High Powered Pay Committee. The petitioner submits that he was also entitled for the revision of pay scale and the basic pay of the petitioner was revised accordingly and the petitioner was paid subsistence allowance at the increased rate to the tune of Rs.7155/- from September, 1990 till he retired as per the revised pay scale. However, it is the grievance of the petitioner that the arrears of difference w.e.f 1-1-1986 as per the recommendations of the High Powered Pay Committee was not released in favour of the petitioner though all other employees and officers were given that benefits. The petitioner submitted that it is clearly a case where he has been subjected to hostile discrimination.

#. Reply to the special civil application has been filed by the respondents. Affidavit in support of the reply has been sworn on 25-10-1991. In reply it is contended that because of the irregularity committed by the petitioner as a member of the Committee, the Corporation suffered monetary losses. It is contended that in the absence of withholding of the service dues or retiral benefits of an employee during the pendency of vigilance/C.B.I. case against him, it would be impossible for the respondent No.1-Corporation to recover the requisite loss/damage on account of proved misconduct of such an employee by any other mode that may be available to it. Further reference has been made to the fact that unless the petitioner is given "No Event Certificate" he cannot get any benefit.

#. Learned counsel for the petitioner contended that the action of the respondents to withhold the benefits of arrears of revised pay scale of the petitioner is wholly arbitrary and unjustified. Learned counsel for the petitioner submitted that when C.B.I. case has been registered is not make known to the petitioner but the petitioner was placed under suspension in the year 1988. It is to be mentioned here that none of the learned counsel for the parties have given out what ultimately resulted in the C.B.I. case against the petitioner. Learned counsel for the petitioner further submitted that there is no justification to withhold these benefits of the petitioner ultimately when nothing is found against the petitioner in the criminal case. Lastly, it is contended that other wise also on the ground of pending C.B.I. case, these benefits could not have been withheld as because of some negligence, the Corporation suffered monetary loss, it can be recovered by passing order in the departmental inquiry. In the departmental inquiry

such an order has not been made and even on the conviction of the petitioner in the criminal case, it may not be possible for the respondent-Corporation to recover this amount.

#. The counsel for the respondents supported the action of the Corporation.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. I find sufficient merits in the contention of the learned counsel for the petitioner that in the chargesheet it is not the charge against the petitioner that because of his negligence, the corporation suffered loss. The punishment has not been given to the petitioner for the loss suffered by the Corporation as a result of his negligence. In the absence of the charge ultimately the recovery of loss suffered by the Corporation, which is though recoverable, may not be possible by the Corporation even if the petitioner is convicted in the criminal case.

#. It is really shocking that both the parties have not brought on record what ultimately is decided finally in the criminal case. This criminal case in all the eventualities has to be taken to have been filed in the year 1988 and even if after 12 years, this matter has not been decided, how far it is justified for the Corporation to withhold this amount of the petitioner, who retired under suspension. The petitioner was placed under suspension on 29-2-1988 and till the date of suspension from 1-1-1986 he is entitled for his pay in the revised pay scale. During the suspension period, the subsistence allowance has been revised but the arrears of revised subsistence allowance has not been paid to him. Hence, he is entitled for this benefit. Merely, because C.B.I. case is pending against the petitioner for last 12 years, it is not just and reasonable on the part of the respondent to keep the benefits of the petitioner with it.

#. In the result, this special civil application succeeds and the same is allowed and the respondent-Corporation is directed to calculate the difference of the arrears of revised pay scale of the petitioner for the period from 1-1-1986 till the date on which he was placed under suspension under the order dated 29-2-1988 and the amount so calculated has to be deposited in the Court within a period of 15 days thereafter. So far as the arrears of subsistence

allowance is concerned, as per the revised pay scale, determination of arrears thereof has also to be made from the date of suspension of the petitioner till the date of his retirement and the amount so calculated be also deposited in the Court within 15 days. On deposit of this amount, the Court shall pass the order for disbursement and investment, as the case may be, after hearing the counsel for the parties. Rule is made absolute accordingly with no order as to costs.

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